IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3955 OF 2005

Municipal Corporation of Greater Mumbai : Petitioner
(Orig. Defendant)

V/s.

Mr.Ramnik Popatlal Shah : Respondent
(Orig. Plaintiff)

...

Mr.A.S. Bhor for the petitioners.

Ms Shobha Salvi for the respondent.

...

CORAM : S.A. BOBDE, J.

June 20, 2005.

P.C.:

1. Rule, returnable forthwith.

Ms Salvi, learned counsel, appears and waives service of rule on behalf of the respondent.

Heard by consent.

2. The petitioner has challenged the order at exh.16 dated 24.3.2005 treating the evidence on the part of the BMC as closed and adjourning the matter for arguments to 26.4.2005 in a suit filed by the respondent against the BMC.

3. The petitioner has also challenged the order below

exh.8 which reads as follows:-

> "Heard both sides. The suit is of 1997 as per order dated 3.2.2004 are W.S. is on record. The admissibility of it as W.S. can be considered appropriately. Hence this application is rejected."

The petitioner has also challenged the order below exh.15 which reads as follows:-

> "Heard earlier application Exhibit '8' filed by the defendant BMC on 2.12.2004 for taking W.S. on record was rejected by my predecessor. That order was not challenged in the Higher Court and today again application made for filing W.S. After rejection of earlier application on 2.12.2004, plaintiff was cross-examined on the same day by Advocate for BMC. Thereafter 4 dates were passed (sic). Plaintiff closed his evidence on 10.2.2005. No attempt was made by BMC to file W.S. Writ of summons was served on BMC on 18.1.1997, during last 8 years was not filed which shows negligence on the part of

> BMC without challenging the earlier order of rejection, again application is fialed which is not tenable and hence rejected."

4. It is obvious from the earlier order dated 2.12.2004 below exh.8 that the petitioner's written statement is on record. It is as per their own request which is apparent from the roznama dated 3.2.2004 which reads as follows:-

> "None for plff. Ms Puranik for BMC. The reply which is already filed according to counsel for BMC. It is also to be treated as W/S."

5. The learned counsel for the petitioner states that the petitioner be allowed to file affidavit of evidence. However, no such prayer appears to have been made before the trial Court nor is the learned counsel for the petitioner in a position to point out whether the petitioner requested the Court to file affidavit of evidence and such a prayer has been rejected.

6. There is no material irregularity or error of law apparent on the face of the record. There is no reason to interfere. The petition is dismissed. The rule stands discharged.

S.A. BOBDE, J.